

ARTICLE 4. BURNING REGULATIONS**RULE 1. OPEN BURNING****326 IAC 4-1-0.5 ----- Open burning: definitions**

Unless otherwise stated, the following definitions apply to this rule:

- (1) “Adequate fire fighting equipment” means equipment sufficient and appropriate under the circumstances to extinguish the fire.
- (2) “Clean petroleum products” means an uncontaminated, refined petroleum product, such as kerosene or diesel fuel, not previously used in any application.
- (3) “Clean wood products” means wood products, including vegetation, that are not coated with stain, paint, glue, or other coating material.
- (4) “Drainage ditch” shall have the meaning of regulated drain or open drain under IC 36-9-27-2.
- (5) “Emergency burning” means the burning of clean wood waste or deceased animals caused by a natural disaster or an uncontrolled event such as the following:
 - (A) A tornado.
 - (B) High winds.
 - (C) An earthquake.
 - (D) An explosion.
 - (E) A hail storm, a rain storm, or an ice storm.
- (6) “Open burn” means the burning of any materials wherein air contaminants resulting from combustion are emitted directly into the air, without passing through a stack or chimney from an enclosed chamber.
- (7) “Open burning approval” means an authorization allowing an activity that otherwise is not exempt or allowed by law.

[As added at: 19 IR 3340.]

326 IAC 4-1-1 ----- Open burning: applicability

The requirements of this rule establish standards for open burning that would result in emissions of regulated pollutants. This rule applies to all open burning except for the following:

- (1) Open burning by and at a source that has obtained a registration or permit under 326 IAC 2-5.1, 326 IAC 2-6.1, 326 IAC 2-7, or 326 IAC 2-8 that specifically regulates the open burning to be performed by and at the source. This rule does apply to open burning not addressed in such a registration or permit, or if the registration or permit requires compliance with this rule.
- (2) Except as provided in IC 13-17-9-3, where open burning allowed under this rule is prohibited by other state or local laws, regulations, or ordinances.

[As amended at: 22 IR 1067.]

326 IAC 4-1-2 ----- Open burning: prohibition

Open burning is prohibited except as allowed in this rule. The department encourages alternatives to open burning, such as sale or reuse.

[As amended at: 19 IR 3341.]

326 IAC 4-1-3 ----- Open burning: exemptions from prohibition

(a) IC 13-1-1.2 exempts certain types of open burning for maintenance purposes listed as follows:

- (1) A person may open burn the following:
 - (A) Vegetation from:
 - (i) a farm;

- (ii) an orchard;
 - (iii) a nursery;
 - (iv) a tree farm; or
 - (v) a drainage ditch.
- (B) Wood products derived from pruning or clearing a roadside by a county highway department.
- (C) Wood products derived from the initial clearing of a public utility right-of-way so long as the open burn occurs in an unincorporated area.
- (D) Undesirable:
 - (i) wood structures on real property; or
 - (ii) wood remnants of the demolition of a predominantly wooden structure originally located on real property; located in an unincorporated area.
- (E) Clean petroleum products for the purpose of maintaining or repairing railroad tracks, including the railroad rights-of-way, but not including railroad ties.
- (2) All open burning that is allowed under this subsection must comply with the following conditions:
 - (A) A person who open burns shall extinguish the fire if the fire creates a nuisance or fire hazard.
 - (B) Burning may not be conducted during unfavorable meteorological conditions such as:
 - (i) high winds;
 - (ii) temperature inversions; or
 - (iii) air stagnation.
 - (C) All fires must be attended at all times during burning until completely extinguished.
 - (D) All asbestos-containing materials must be removed before the burning of a structure.
 - (E) Asbestos containing materials may not be burned.
- (b) The types of fires identified in subsection (c) are allowed under this rule. Unless specified otherwise, the following conditions apply to any fire allowed by this subsection:
 - (1) Fires must be attended at all times and until completely extinguished.
 - (2) If at any time a fire creates:
 - (A) a pollution problem;
 - (B) a threat to public health;
 - (C) a nuisance; or
 - (D) a fire hazard;it shall be extinguished.
 - (3) No burning shall be conducted during unfavorable meteorological conditions such as:
 - (A) high winds, temperature inversions, or air stagnation; or
 - (B) when a pollution alert or ozone action day has been declared.
 - (4) All burning shall comply with other federal, state, and local laws, rules, and ordinances.
 - (5) Adequate firefighting equipment shall be on-site for extinguishing purposes during burning times.
 - (6) Burning shall be conducted during daylight hours only, and all fires shall be extinguished prior to sunset.
- (c) The following types of fires are allowed:

- (1) Recreational or ceremonial fires, such as fires for scouting activities, and fires used for cooking purposes, such as camp fires, subject to the conditions in subsection (b)(1) through (b)(5) and the following conditions:
 - (A) Only clean wood products, paper, charcoal, or clean petroleum products may be burned.
 - (B) The local fire department and health department must be notified at least twenty-four (24) hours prior to any burning where the size of the pile being burned is more than one hundred twenty-five (125) cubic feet.
 - (C) Fires shall not be ignited prior to two (2) hours before the recreational activity is to take place and shall be extinguished upon conclusion of the activity.
 - (D) The pile to be burned shall be less than or equal to one thousand (1,000) cubic feet and only one (1) pile may be burned at a time.
 - (E) The fires shall not be used for disposal purposes.
 - (F) Fires shall not take place within five hundred (500) feet of any fuel storage area or pipeline.
- (2) Private residential burning, where the building contains four (4) or fewer dwelling units. Burning is prohibited in apartment and condominium complexes and mobile home parks. Beginning June 23, 1995, residential open burning is prohibited in the counties listed in section 4.1(c) of this rule. Burning shall be subject to the conditions in subsection (b) and the following conditions:
 - (A) Burning shall be in a noncombustible container that is:
 - (i) sufficiently vented to induce adequate primary combustion; and
 - (ii) has enclosed sides and a bottom.
 - (B) Only clean wood products and paper may be burned.
- (3) Waste oil burning where waste oil originates from spillage during testing of an oil well and has been collected in a properly constructed and located burn off pit as prescribed in 310 IAC 7-1-37(a) in the department of natural resources (DNR) rules, oil and gas operations. Burning shall be subject to the conditions in subsection (b) and the following conditions:
 - (A) Each oil pit may be burned once every two (2) months.
 - (B) The fire must be extinguished within thirty (30) minutes of ignition.
- (4) DNR burning, to facilitate prescribed burning on DNR-controlled properties for wildlife habitat maintenance, forestry purposes, natural area management, and firefighting or prevention; United States Department of the Interior burning, to facilitate a National Park Service Fire Management Plan for the Indiana Dunes National Lakeshore, for example; and United States Department of Agriculture, Forest Service burning, to facilitate wildlife habitat maintenance, forestry purposes, natural area management, ecosystem management, and fire-fighting or prevention. Burning, shall be subject to conditions in subsection (b)(1) through (b)(5) and the following conditions:
 - (A) If the fire creates a nuisance, fire hazard, or pollution problem, it shall be extinguished.
 - (B) No burning shall be conducted during unfavorable meteorological conditions, such as high winds, temperature inversions, or air stagnation or when a pollution alert or ozone action day has been declared.
 - (C) Only vegetation and clean petroleum products may be burned.

Burning by the U.S. Forest Service for firefighting or prevention is not subject to the conditions in subsection (b) or this subdivision.
- (5) Burning of marijuana by federal, state, and local law enforcement offices. Burning shall be subject to the conditions in subsection (b) and only clean petroleum products shall be used for ignition purposes.
- (6) Burning, for the purpose of heating, using clean wood products or paper in a non-

combustible container that is sufficiently vented to induce adequate primary combustion, and has enclosed sides and a bottom. Burning shall be subject to the conditions in subsection (b)(1) through (b)(5) and the following conditions:

- (A) Burning shall only occur between October 1 and May 15.
- (B) Burning shall not be conducted for the purpose of disposal.
- (7) Burning of vegetation by fire departments and firefighters to create fire breaks for purposes of extinguishing an existing fire. Such burning is not subject to the conditions in subsection (b).
- (8) Burning of clean petroleum products for fire extinguisher training, subject to the conditions in subsection (b) and the following conditions:
 - (A) The local fire department and health department must be notified at least twenty-four (24) hours in advance of the date, time, and location of the burning.
 - (B) All burning shall take place in a noncombustible container or enclosure, enclosed on all sides with a bottom.
 - (C) A total of no more than fourteen (14) gallons of fuel may be burned per day.
 - (D) Only one (1) fire may be allowed to burn at a time.
 - (E) All burning shall be conducted in such a manner so as to prevent any possibility of soil contamination.

[As amended at: 19 IR 3341.]

326 IAC 4-1-4 ----- Open burning: emergency burning

(a) Emergency burning with prior oral approval of the commissioner or the commissioner's designated agent may be authorized for the following:

- (1) spilled or escaping liquid or gaseous petroleum products when all reasonable efforts to recover the spilled material have been made and failure to burn would result in an imminent fire or health hazard or air or water pollution problem; or
- (2) clean wood waste, vegetation, or deceased animals resulting from a natural disaster where failure to burn would result in an imminent health or safety hazard.

The commissioner or the commissioner's designated agent shall issue a written approval within seven (7) days of the oral approval. The written approval shall contain any conditions on emergency burning that the commissioner established in the oral approval.

[As amended at: 19 IR 3343.]

326 IAC 4-1-4.1 ----- Open burning: criteria and conditions for approval

(a) Burning not exempted by section 3 or 4 of this rule may be authorized by the issuance of an approval by the commissioner or the commissioner's designated agent after consideration of an approval application. Such burning may be authorized for, but not limited to, the following:

- (1) Burning for the purpose of fire training.
- (2) Burning of natural growth derived from a clearing operation, such as removal of natural growth for change in use of the land.
- (3) Burning of highly explosive or other dangerous materials for which no alternative disposal method exists or where transportation of such materials is hazardous.
- (4) Burning of clean wood products.
- (5) Burning of natural growth for the purpose of land management.
- (b) The following criteria may be considered for approval under this section:
 - (1) The applicant has demonstrated that alternative methods for disposal are impractical or prohibitively expensive.
 - (2) There are not more than five (5) residences or structures within five hundred (500) feet of the proposed burning site.

- (3) There have been no open burning violations at the site of the proposed burning or by the applicant.
 - (4) If the application involves a structure for fire training, the structure has not been demolished prior to training activities.
 - (5) The burning site is located in a county not designated as a nonattainment area for PM₁₀ or ozone. The commissioner or the commissioner's agent may allow open burning in such nonattainment areas, subject to conditions necessary to protect air quality.
- (c) No approval shall be granted at any time for residential burning in Clark, Floyd, Lake, or Porter County.
- (d) Any approval shall be subject to the following conditions unless otherwise stipulated in the open burning approval letter:
- (1) Only clean wood products shall be burned.
 - (2) No asbestos-containing material shall be burned.
 - (3) No burning shall be conducted during unfavorable meteorological conditions, such as:
 - (A) high winds, temperature inversions, or air stagnation; or
 - (B) when a pollution alert or ozone action day has been declared.
 - (4) Burning shall be conducted during daylight hours only and all fires shall be extinguished prior to sunset.
 - (5) If at any time the fire creates:
 - (A) an air pollution problem;
 - (B) a threat to public health;
 - (C) a nuisance; or
 - (D) a fire hazard;the burning shall be extinguished.
 - (6) The local fire department and health department must be notified at least twenty-four (24) hours in advance of the date, time, and location of the burning.
 - (7) The approval letter shall be made available at the burning site to state and local officials upon request except during emergency burning.
 - (8) Adequate fire fighting equipment shall be on-site for extinguishing purposes during burning times.
 - (9) No burning shall take place within:
 - (A) one hundred (100) feet of any structure or powerline; or
 - (B) three hundred (300) feet of a frequently traveled road, fuel storage area, or pipeline.
 - (10) Fires must be attended at all times until completely extinguished.
 - (11) All burning must comply with other federal, state, or local laws, regulations, or ordinances, including 40 CFR 61 Subpart M* (National Emissions Standards for Asbestos).
 - (12) No waste that is regularly generated as a result of a routine business operation shall be burned.
 - (13) The material to be burned shall not exceed one thousand (1,000) cubic feet.
- (e) An approval letter shall be valid for no longer than one (1) year from the date of issuance. However, an approval letter may be valid for as long as five (5) years if the approval application is accompanied by an open burning plan. The plan shall:
- (1) contain a description of the open burning proposed for the period of time for which an approval letter is sought; and

(2) be incorporated as a condition of the approval letter under subsection (d) or (f). Any change in the plan must receive an additional approval letter, unless the change is to reduce open burning, or the change is to conduct burning exempted under section 3 of this rule. The plan shall be available for review upon the request by the department.

(f) The commissioner or the commissioner's designated agent may add conditions to an approval letter, as necessary, to prevent a public nuisance or protect the public health or the environment. Such conditions may be based on local air quality conditions, including whether the area is a nonattainment county as defined in 326 IAC 1-4-1 or has been redesignated from nonattainment to attainment status.

(g) A decision on the open burning approval letter is subject to IC 4-21.5 (Administrative Orders and Procedures Act).

[As added at: 19 IR 3343.]

326 IAC 4-1-4.2 ----- Open burning: approval revocation

The commissioner or the commissioner's designated agent may revoke an approval letter if the applicant:

- (1) violates any requirement of section 4.1(d) of this rule;
- (2) violates any condition added to the approval letter under section 4.1(f) of this rule;
or
- (3) falsifies information on an application for an approval.

[As added at: 19 IR 3344.]

326 IAC 4-1-4.3 ----- Open burning: delegation of approval authority

The commissioner may delegate the authority to issue open burning approval letters in accordance with this section to a local health department, fire department, solid waste management district, or other agency upon a demonstration that the agency:

- (1) has the necessary legal authority and resources to implement an approval program that is at least as protective of the public health, welfare, and the environment as the provisions of this rule; and
- (2) commits to implement the program described in subdivision (1) and to follow the public notification procedures of IC 4-21.5 in the issuance of approval letters.

The commissioner may establish conditions for the delegation and may revoke any such delegation if the commissioner determines that any condition has not been satisfied or the circumstances under which the delegation was issued have changed.

[As added at 19 IR 3344.]

326 IAC 4-1-5 ----- Open burning: liability for fires

Any person who allows the accumulation or existence of combustible material which constitutes or contributes to a fire causing air pollution may not refute liability for violation of this rule (326 IAC 4-1) on the basis that said fire was set by vandals, accidental, or an act of God.

326 IAC 4-1-6 ----- Open burning: air curtain destructors; approval required

(a) An owner or operator of an air curtain destructor as defined in 326 IAC 1-2-2.5 shall submit an application to the department to obtain a letter of approval from the commissioner or the commissioner's designated agent prior to its installation or operation at a new site. The owner or operator:

- (1) shall not operate the air curtain destructor unless the owner or operator holds a valid letter of approval; and
- (2) shall maintain the letter of approval at the air curtain destructor site at all times for verification by state or local officials.

(b) Burning exempted under section 3 of this rule does not require a letter of approval from the commissioner under this section. However, the burning shall comply with the conditions set forth in section 7 of this rule.

[As amended at: 19 IR 3345.]

326 IAC 4-1-7 ----- Open burning: air curtain destructors; conditions for approval

(a) To obtain an air curtain destructor letter of approval, the owner or operator shall ensure that installation and operation of such air curtain destructor will comply with subdivisions (1) through (22) as follows. Burning shall be terminated immediately at any air curtain destructor site that does not comply with this section.

- (1) Only untreated wood products shall be burned, except for minimal amounts of uncontaminated petroleum products that may be used for ignition.
- (2) Burning shall not be conducted during unfavorable meteorological conditions, such as high winds or air stagnation or when a pollution alert or ozone action day has been declared.
- (3) The air curtain destructor shall not be operated prior to one (1) hour after official sunrise, the fire shall not be fed after two (2) hours before official sunset, the fire must be completely extinguished by official sunset, and at least one (1) foot of dirt must be placed over the ashes in the pit by official sunset.
- (4) An air curtain destructor site shall be located no less than two hundred fifty (250) feet from any private residence, public roadway, power line, or structure, and no less than five hundred (500) feet from any pipeline or fuel storage area.
- (5) An air curtain destructor site shall not be located within one thousand (1,000) feet of a solid waste land disposal facility as defined in 329 IAC 10-2-176 or transfer station as defined in 329 IAC 11-2-47.
- (6) An air curtain destructor shall not be permanently located at any site.
- (7) An air curtain destructor shall be attended at all times while burning and until combustion is complete. Adequate firefighting equipment shall be maintained at an air curtain destructor site at all times during operation.
- (8) Burning shall not create or contribute to:
 - (A) an air pollution problem;
 - (B) a nuisance; or
 - (C) a fire hazard.
- (9) An air curtain destructor and pit shall be maintained and operated according to the manufacturer's specifications and recommendations.
- (10) The fan blades of the air curtain destructor shall be regularly cleaned to reduce buildup of dirt and debris.
- (11) All canisters must be properly aligned, connected, and maintained so as to prevent leaks between adjacent canisters.
- (12) The nozzles must be maintained in good working condition. The minimum average velocity at the nozzle must be nine thousand fifty (9,050) feet per minute, and the air flow at the nozzle must be a minimum of seven hundred fifty (750) cubic feet per minute per foot of length.
- (13) The engine running the air curtain destructor fan must be maintained in proper working condition.
- (14) The width of the pit shall not extend beyond the length of the nozzle action.
- (15) The distance from the air curtain destructor to the opposite wall of the pit shall not exceed ten (10) feet.
- (16) The depth of the pit shall be of such distance to allow all burning material to be below the curtain of air created by the air curtain destructor.

- (17) All nozzles shall be aligned and directed toward the opposite wall so that the air strikes the opposite wall at least three (3) feet below the grade upon which the air curtain destructor is located so that the air tumbles in the pit.
 - (18) The air curtain destructor shall not be at a higher elevation than the elevation of the opposite wall.
 - (19) The pit shall be enclosed on four (4) sides, and the walls shall be perpendicular to level ground.
 - (20) Material being loaded into the pit shall be picked up and dropped into the pit, and at no time shall the material protrude through the curtain of air while burning.
 - (21) The approval letter shall be made available at the burning site to state or local officials upon request.
 - (22) The owner or operator of an air curtain destructor shall provide twenty four (24) hour notification in advance to the local fire department and the local health department of the dates and times that the air curtain destructor will be in operation.
- (b) An air curtain destructor letter of approval shall be valid for no longer than one (1) year.
- (c) The commissioner or the commissioner's designated agent may add conditions to an air curtain destructor letter of approval as necessary to prevent a public nuisance or protect the public health.
- (d) A decision on the air curtain destructor letter of approval is subject to IC 4 21.5 (Administrative Orders and Procedures Act (AOPA)).
- [As amended at: 19 IR 3345.]*

326 IAC 4-1-8 ----- Open burning: air curtain destructors; revocation of approval

The commissioner or the commissioner's designated agent may revoke an air curtain destructor letter of approval if the owner or operator:

- (1) violates any requirement of section 7(a) of this rule;
- (2) violates any condition added to the letter of approval under section 7(c) of this rule;
- (3) violates any other state or local rule or ordinance pertaining to the installation or operator *[sic.]* of air curtain destructors;
- (4) falsifies information on an application for a letter of approval; or
- (5) operates an air curtain destructor in a manner that is hazardous to the public health.

[As amended at: 19 IR 3346.]

RULE 2. INCINERATORS

326 IAC 4-2-1 ----- Incinerators: applicability

This rule (326 IAC 4-2) establishes standards for the use of incinerators which emit regulated pollutants. This rule (326 IAC 4-2) does not apply to incinerators in residential units consisting of four (4) or fewer families or incinerators for which streamlined requirements have been established in accordance with 326 IAC 2-7-24. All other incinerators are subject to this rule (326 IAC 4-2).

[As amended at: 20 IR 2366.]

326 IAC 4-2-2 ----- Incinerators: requirements

All incinerators shall:

- (1) consist of primary and secondary chambers or the equivalent;
- (2) be equipped with a primary burner unless burning wood products;
- (3) comply with 326 IAC 5-1 and 326 IAC 2;

- (4) be maintained properly as specified by the manufacturer and approved by the commissioner;
- (5) be operated according to the manufacturer's recommendations and only burn waste approved by the commissioner;
- (6) comply with other state and/or local rules or ordinances regarding installation and operation of incinerators;
- (7) be operated so that emissions of hazardous material including, but not limited to, viable pathogenic bacteria, dangerous chemicals or gases, or noxious odors are prevented;
- (8) not emit particulate matter in excess of:
 - (A) incinerators with a maximum refuse-burning capacity of two hundred (200) or more pounds per hour: three-tenths (0.3) pounds of particulate matter per one thousand (1,000) pounds of dry exhaust gas at standard conditions corrected to fifty percent (50%) excess air; or
 - (B) all other incinerators: five-tenths (0.5) pounds of particulate matter per one thousand (1,000) pounds of dry exhaust gas at standard conditions corrected to fifty percent (50%) excess air; and
- (9) not create a nuisance or a fire hazard.

If any of the above result, the burning shall be terminated immediately.

[As amended at: 12 IR 1127.]

